IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

TAX APPEAL NO.258 OF 2007

The Commissioner of Income Tax...Appellant

Vs.

Godavari Manar Sahakari Sakhar Karkhana Ltd.Respondent

Mr. B.M. Chatterji with Mrs. P.P. Bhosale for the Appellant.
Mr. S.N. Inamdar with Mr. A.K. Jasani, for the Respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED : 23RD OCTOBER 2007

P.C.

. Admitted on the following questions:-

1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to Harvesting and Transporting Contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which assessee is giving huge interest to the financial institutions. Thus, it was nothing but a diversion of borrowed funds for non-business purpose?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in following the decision in the case of CIT & Another vs. Radico Khaitan Ltd., reported in (2005) 274 ITR

354 (All.), wherein the issue involved before the Court was totally different with that of in the case above assessee society?

3) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that Bakshish payment made by the assessee society to Harvesting and Transport labourers was out of commercial expediency whereas such payments are purely voluntarily, based on sweet will of assessee society and being over and above the agreed price of contracts, these do not form the part of business expenditure?

4) Whether on the facts and in the circumstances of the case, the Tribunal was right in directing to allow the claim in respect of delayed payment of PF, if it has been paid upto l the date of filing of Return of Income ignoring the fact that said amendment to the provisions of Section 43B of the I.T. Act was made w.e.f. 01/04/2004 i.e. from A.Y. 2004-05 and prior to that period, such contribution is to be allowed only when the same is paid before the due date of respective month?

2. Question 1 and 3 are covered by the Judgment of this Court in Income Tax Appeal No.273 of 2007 The Commissioner of Income-tax vs. Samarth Sahakari Sakhar Karkhana Ltd. decided on 17th September, 2007.

3. Issue No.4 has been answered by the judgment in Income Tax Appeal No.256 and 259 of 2007 decided on 8th October, 2007 against the assessee.

4. Question No.2 is not required to be answered. In the light of that Question 1 and 3 answered in the affirmative in favour of the assessee. Questions 4 answered in favour of the Revenue and against the assessee. Appeal disposed of accordingly.

(J.P. DEVADHAR, J.) **(F.I. REBELLO**, J)